

Underwriters at Lloyd's London a/s/o  
Nancy I. Brenner Wluka, Trustee of the  
Nancy I. Brenner Wluka 1999 Revocable Trust

vs.

U-Line Corporation

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18CV00645

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<b>CIVIL TRACKING ORDER</b> (STANDING ORDER 1- 88)	DOCKET NUMBER <b>1872CV00645</b>	<b>Trial Court of Massachusetts</b> <b>The Superior Court</b>	
CASE NAME: Underwriters at Lloyd's London Subrogee of Nancy I. Brenner Wluka, Trustee of the Nancy I. Brenner Wluka 1999 Revocable Trust vs. U-Line Corporation		Scott W. Nickerson, Clerk of Court Barnstable County	
TO: <b>File Copy</b>		COURT NAME & ADDRESS Barnstable County Superior Court 3195 Main Street Barnstable, MA 02630	

### TRACKING ORDER - A - Average

You are hereby notified that this case is on the track referenced above as per Superior Court Standing Order 1-88. The order requires that the various stages of litigation described below must be completed not later than the deadlines indicated.

#### STAGES OF LITIGATION

#### DEADLINE

	SERVED BY	FILED BY	HEARD BY
Service of process made and return filed with the Court		02/19/2019	
Response to the complaint filed (also see MRCP 12)		03/21/2019	
All motions under MRCP 12, 19, and 20	03/21/2019	04/22/2019	05/20/2019
All motions under MRCP 15	01/15/2020	02/14/2020	02/14/2020
All discovery requests and depositions served and non-expert depositions completed	11/10/2020		
All motions under MRCP 56	12/10/2020	01/11/2021	
Final pre-trial conference held and/or firm trial date set			05/10/2021
Case shall be resolved and judgment shall issue by			11/22/2021

The final pre-trial deadline is **not the scheduled date of the conference**. You will be notified of that date at a later time.  
Counsel for plaintiff must serve this tracking order on defendant before the deadline for filing return of service.  
This case is assigned to

DATE ISSUED <b>11/21/2018</b>	ASSISTANT CLERK <b>Scott W Nickerson</b>	PHONE <b>(508)375-6684</b>
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## CIVIL ACTION COVER SHEET

DOCKET NUMBER

1872CV645

Trial Court of Massachusetts  
The Superior Court

PLAINTIFF(S): Underwriters at Lloyd's, London  
ADDRESS: c/o Yankee Risk Solutions, LLC  
915 Route 6A  
YarmouthPort, MA 02675  
ATTORNEY: Chris J. Connolly/Buchanan and Associates  
ADDRESS: 124 Washington Street, Suite 303  
Foxboro, MA 02035  
O: 634044

COUNTY  
Barnstable

DEFENDANT(S): U-Line Corporation  
8900 North 55th Street  
Milwaukee, WI 53223

ADDRESS:

SUPERIOR COURT  
BARNSTABLE, SS  
FILED NOV 21 2018

J. H. Wilson Clerk

TYPE OF ACTION AND TRACK DESIGNATION (see reverse side)

CODE NO.

B05

TYPE OF ACTION (specify)

Products Liability

TRACK

A

HAS A JURY CLAIM BEEN MADE?

☒ YES☐ NO

Other please describe:

## STATEMENT OF DAMAGES PURSUANT TO G.L. c. 212, § 3A

The following is a full, itemized and detailed statement of the facts on which the undersigned plaintiff or plaintiff counsel relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

## TORT CLAIMS

(attach additional sheets as necessary)

## A. Documented medical expenses to date:

1. Total hospital expenses ..... \$  
2. Total doctor expenses ..... \$  
3. Total chiropractic expenses ..... \$  
4. Total physical therapy expenses ..... \$  
5. Total other expenses (describe below) ..... \$  
Subtotal (A): \$

B. Documented lost wages and compensation to date ..... \$ 111,465.88

C. Documented property damages to date ..... \$

D. Reasonably anticipated future medical and hospital expenses ..... \$

E. Reasonably anticipated lost wages ..... \$

Other documented items of damages (describe below) ..... \$

Briefly describe plaintiff's injury, including the nature and extent of injury:

Ice maker unit manufactured by U-Line Corporation malfunctioned, causing significant water damage to the plaintiff's

dwelling and personal property.

TOTAL (A-F): \$ 111,465.88

## CONTRACT CLAIMS

(attach additional sheets as necessary)

Provide a detailed description of claim(s):

U-Line breached its express and implied warranties by placing a defective icemaker unit into the stream of commerce.

TOTAL: \$ 111,465.88

Signature of Attorney/Pro Se Plaintiff: X

Christopher J. Connolly

Date: 11/19/18

RELATED ACTIONS: Please provide the case number, case name, and county of any related actions pending in the Superior Court.

## CERTIFICATION PURSUANT TO SJC RULE 1:18

I hereby certify that I have complied with requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods of dispute resolution.

Signature of Attorney of Record: X

Christopher J. Connolly

Date: 11/19/2018

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COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

SUPERIOR COURT  
CIVIL ACTION NO.

1872CV645



UNDERWRITERS AT LLOYD'S, LONDON  
a/s/o NANCY I. BRENNER WLUKA,  
TRUSTEE OF THE NANCY I. BRENNER  
WLUKA 1999 REVOCABLE TRUST,  
Plaintiff

COMPLAINT

v.

U-LINE CORPORATION,  
Defendant

The plaintiff, Underwriters at Lloyd's, London a/s/o Nancy I. Brenner Wluka, Trustee of the Nancy I Brenner Wluka 1999 Revocable Trust, through its attorneys, hereby alleges as follows:

**PARTIES**

1. At all times material hereto, the plaintiff, Underwriters at Lloyd's, London, (hereinafter referred to as "Lloyd's"), is a duly organized insurance company licensed and authorized to conduct business in the writing of surplus lines of insurance coverage within the Commonwealth of Massachusetts, whose principal place of business is located in the City of Yarmouth Port, Barnstable County, Massachusetts.
2. At all times material hereto, subrogor, Nancy I. Brenner Wluka, Trustee of the Nancy I. Brenner Wluka 1999 Revocable Trust, (hereinafter referred to as "The Trust"), is the owner of record of the property that is the subject of this lawsuit, located at 24 Flat Pond Circle, Mashpee, Barnstable County, Massachusetts.



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3. At all times material hereto, the defendant, U-Line Corporation (hereinafter referred to as "U-Line") is a foreign corporation organized under the laws of the State of Wisconsin, with a principal place of business located at 8900 North 55<sup>th</sup> Street, Milwaukee, Wisconsin, 53223, that was and is engaged in the design, manufacture and distribution of residential under-counter ice maker units throughout the United States of America, including the Commonwealth of Massachusetts.

#### JURISDICTION

4. Jurisdiction of the subject matter for this action is conferred upon this Court pursuant to G.L. c. 212, § 3.

#### ALLEGATIONS OF FACT

5. At all times material hereto, the Trust purchased an under-counter residential ice maker, Model No. U-2115RB-00, Serial No. 1431731-05-0001 (hereinafter referred to as "the ice maker unit"), which was manufactured by U-Line.

6. At all times material hereto, the Trust operated the ice maker unit without substantial change in its condition, and did not alter or modify it in any way prior to or during its use.

7. At all times material hereto, however, the subject product was defectively manufactured, such that on or about September 27, 2017, a date within the useful safe life of the subject product, and during normal and foreseeable operation, the ice maker unit malfunctioned, causing water damage to the Trust's dwelling and personal property stored therein.

8. At the time of the subject incident, Lloyd's had issued to the Trust a policy of homeowner's insurance, Policy No. YH00000068-07, in effect at the time and containing a \$5,000.00 deductible.

9. In accordance with the governing aforementioned insurance policy, Barnstable issued actual cash value claim payments to the Trust subject to the policy's deductible, for the repair and/or replacement of its damaged property.

10. As a result, Barnstable is now legally subrogated to the recovery of the aforementioned claim payments and deductible from the defendant, the sum of which is sufficient to invoke the jurisdiction of this Honorable Court.

#### **FIRST COUNT – BREACH OF EXPRESSED WARRANTY**

11. The plaintiff incorporates by reference the allegations contained in paragraphs 1 through 10 above.

12. The defendant, through labeling, advertisement and verbal representations directed to the attention of the public generally, expressly warranted that the subject product could be used for its intended or particular purpose and was safe and free from defects.

13. Pursuant to M.G.L. c. 106, § 2-313, and in reliance upon such warranty made by the defendant, the Trust did in fact own and operate the ice maker unit as set forth above.

14. At the time the product was originally purchased, however, it was, in fact, defective, and not safe or reasonably suitable or fit for the purposes advertised.

15. As a result, the defendant's expressed warranties were not true, and such breaches of warranty proximately caused the plaintiff's damages as set forth herein.

## **SECOND COUNT - BREACH OF IMPLIED WARRANTY**

16. The plaintiff incorporates by reference the allegations contained in paragraphs 1 through 15 above.

17. The defendant impliedly warranted that the ice maker unit was of merchantable quality, fit, safe and in proper condition for the ordinary use for which it was designed, manufactured and ultimately used, and in reliance upon the implied warranty of merchantability, the Trust did in fact own and operate the subject ice maker unit as set forth above.

18. The subject ice maker unit, however, was not of merchantable quality, and in fact, was not fit, safe, or useable for any purpose for which it was designed and/or manufactured. Therefore, as a direct and proximate result of the defendant's breach of the implied warranty of merchantability, the plaintiff was damaged as set forth herein.

## **THIRD COUNT - NEGLIGENCE**

19. The plaintiff incorporates by reference the allegations contained in paragraphs 1 through 18 above.

20. The ice maker unit was designed and manufactured by the defendant with the reasonable expectation that it would be used by its consumers for its intended purpose, and knew or should have known, in the exercise of ordinary care that if defectively designed or manufactured, the product was a potentially hazardous instrumentality.

21. In careless disregard of its duties, however, the defendant did in fact negligently design and/or manufacture the product, and furthermore, allowed the defective product to enter the stream of commerce, causing the plaintiff's damages as set forth herein.

WHEREFORE, the plaintiff, Lloyd's, London a/s/o Nancy I. Brenner Wluka, Trustee of the Nancy I. Brenner Wluka 1999 Revocable Trust, requests the following relief:

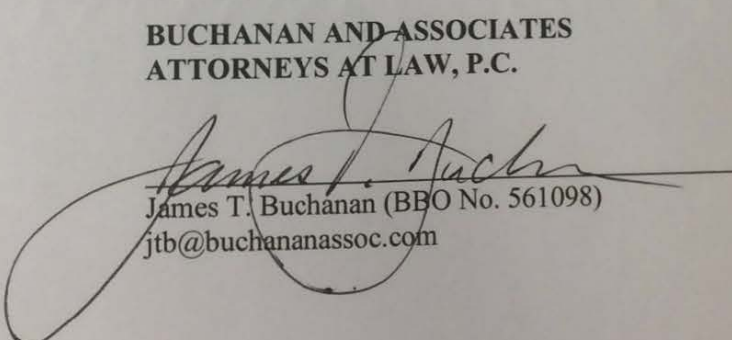
1. Enter judgment against the defendant, U-Line Corporation;
2. Award the plaintiff interest, costs, attorneys' fees and expenses; and
3. Award such other relief as this honorable Court deems just and appropriate.

**JURY DEMAND**

The plaintiff, Lloyd's, London a/s/o Nancy I. Brenner Wluka, Trustee of the Nancy I. Brenner Wluka 1999 Revocable Trust, demands a trial by jury on all issues so triable.

Respectfully submitted,  
On behalf of the plaintiff,  
Lloyd's, London a/s/o Nancy I. Brenner Wluka,  
Trustee of the Nancy I. Brenner Wluka 1999  
Revocable Trust  
By its attorneys,

**BUCHANAN AND ASSOCIATES  
ATTORNEYS AT LAW, P.C.**

  
James T. Buchanan (BBO No. 561098)  
jtb@buchananassoc.com

*Christopher J. Connolly*

Christopher J. Connolly (BBG No. 634044)

Chris.connolly@buchananassoc.com

124 Washington Street, Suite 303

Foxboro, Massachusetts 02035

(781) 255-0330

Dated:

*November 19, 2018*